

United States  
Circuit Court of Appeals

For the Ninth Circuit.

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NATIONAL PACIFIC OIL COMPANY, a Corporation,

Appellant,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

---

Transcript of Record.

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Upon Appeal from the United States District Court for the  
Southern District of California, Northern Division.

Filed

NOV 1 - 1915

F. D. Monckton,  
Clerk.



No. 2658

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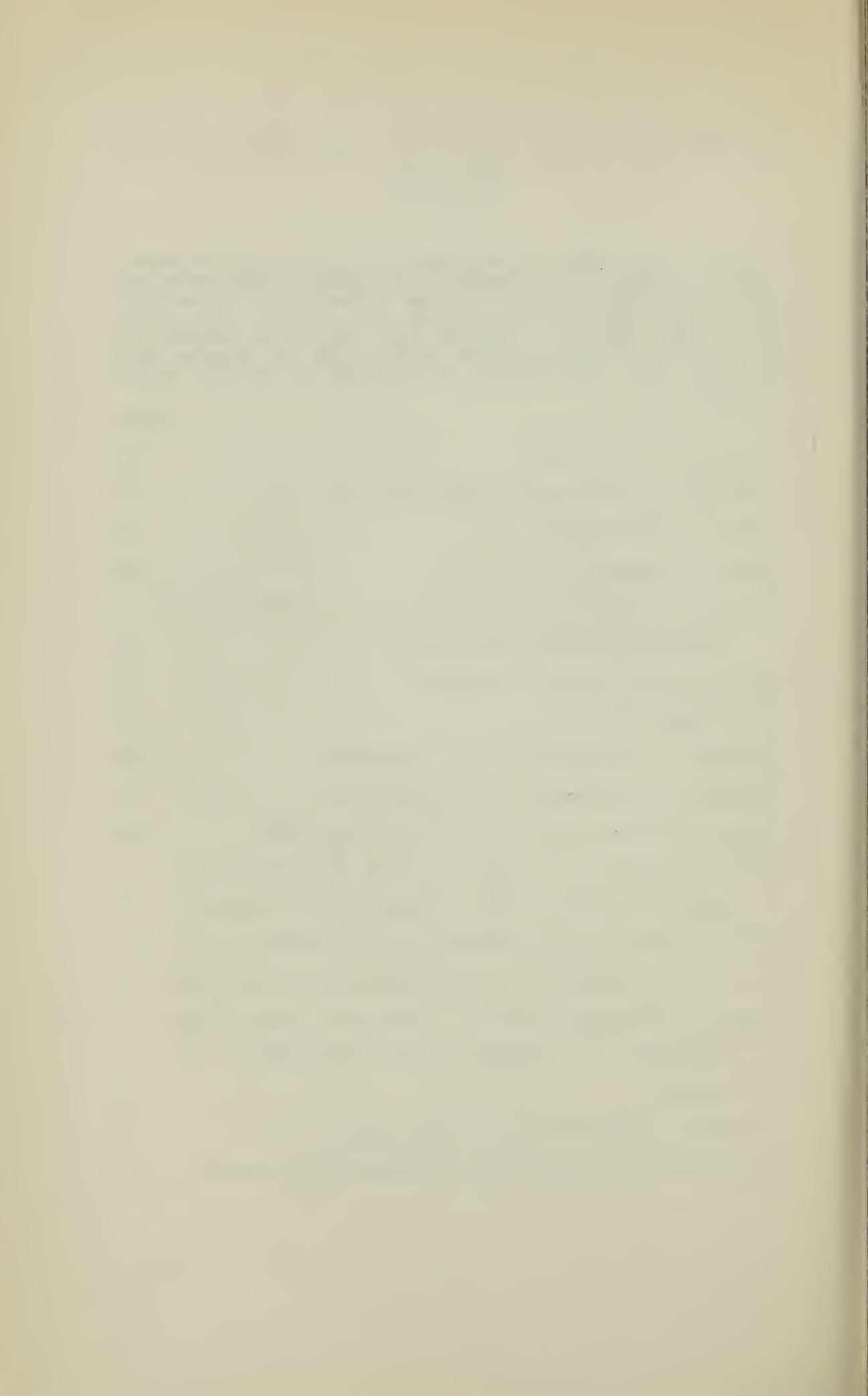


# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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**Names and Addresses of Attorneys.**

For Appellant:

A. L. WEIL, Esq., 1206 Alaska Commercial Building, San Francisco, California.

For Appellees:

THOMAS W. GREGORY, Esq., Attorney-General of the United States, Washington, D. C.;

ALBERT SCHOONOVER, Esq., U. S. Attorney, Los Angeles, California; and

E. J. Justice, Esq., Special Assistant to the Attorney-General, Postoffice Building, San Francisco, California, [3\*]

**[Citation on Appeal (Original).]**

UNITED STATES OF AMERICA,—SS

The President of the United States, to the United States of America, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the clerk's office of the United States District Court for the Southern District of California, Northern Division, Ninth Circuit, wherein the National Pacific Oil Company is appellant, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy

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\*Page-number appearing at foot of page of certified Transcript of Record.



justice should not be done to the parties in that behalf.

Witness, the Honorable M. T. DOOLING, United States District Judge for the Northern District of California, this 21st day of May, A. D. 1915.

M. T. DOOLING,

United States District Judge. [4]

Service accepted this 26 day of May, 1915.

E. J. JUSTICE.

P.

United States of America,—ss.

On this 26th day of May, in the year of our Lord one thousand nine hundred and fifteen, personally appeared before me, Flora Hall, Notary Public in and for the City and County of San Francisco, the subscriber, Charles M. Weile, and makes oath that he delivered a true copy of the within citation to United States of America, delivered to E. J. Justice, solicitor for the within named plaintiff.

CHARLES M. WEILE.

Subscribed and sworn to before me at San Francisco, Cal., this 26th day of May, A. D. 1915.

[Seal]

FLORA HALL,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: No. 47—In Equity. United States District Court for the Southern District of California, Northern Division, Ninth Circuit. National Pacific Oil Company, Appellant, vs. The United States of America. Citation on Appeal Filed Jun. 1, 1915. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.



*In the District Court of the United States, in and for  
the Southern District of California, Northern  
Division.*

No. 47—CIVIL.

THE UNITED STATES OF AMERICA,

Plaintiff,

versus

MIDWAY NORTHERN OIL COMPANY, a Corporation, Los Angeles-McKittrick Oil Company, a corporation, Consolidated Midway Oil Company, a corporation, National Pacific Oil Company, a corporation, Maricopa Northern Oil Company, a corporation, Thirty Thirty-two Land Company, a corporation, General Petroleum Company, a corporation, Standard Oil Company, a corporation, Tarr & McComb, Inc., a corporation, Layne & Bowler Company of California, a corporation, Title Insurance & Trust Company, a corporation, Maricopa Consolidated Oil Company, a corporation, Southern Investment Company, a corporation, El Dora Oil Company, a corporation, King Lumber Company, a corporation, Sesame Oil Company, a corporation, Mary F. Francis, a widow, L. W. Lowell, James Bloom, William S. Kimball, Harry V. Massena, Arthur Whitfield, Maude Whitfield, James E. Stone, John V. Hoffman, M. E. Hoffman, Edward Fox, Charles A. Son, David S. Bachman, William R. Dunn, T. J. Green, M. P. Waite, Anna M. Waite, J. M. Danziger, Daisy C. Danziger,

*National Pacific Oil Company vs.*

A. L. Weil, Florence C. Weil, A. B. Coulson,  
E. A. Wiltsee, G. G. Gillette, Sydney Smith, J.  
R. McKinnie, Orra E. Monnette, M. J. Mon-  
nette, R. P. Davie, Julius Fried, Parker Bar-  
rett, Oma Barrett, J. M. Dunn and Lena  
Dunn,

Defendants. [5]

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*In the District Court of the United States for  
the Southern District of California, Northern  
Division, Ninth Circuit.*

No. 47-CIVIL—IN EQUITY.

THE UNITED STATES OF AMERICA,

Plaintiff,

versus

MIDWAY NORTHERN OIL COMPANY, a Corpo-  
ration, et al.,

Defendants.

**Bill of Complaint.**

GEORGE W. WICKERSHAM,  
Attorney General of the United States.

A. I. McCORMICK,  
United States Attorney.

Filed Jan. 23, 1913. Wm. M. Van Dyke, Clerk.  
By Chas. N. Williams, Deputy Clerk. [6]

*In the District Court of the United States for the  
Southern District of California, Northern Divi-  
sion, Ninth Circuit.*

NO. 47—CIVIL—IN EQUITY.

THE UNITED STATES OF AMERICA,

Plaintiff,

versus

MIDWAY NORTHERN OIL COMPANY, a Corpo-  
ration, Los Angeles-McKittrick Oil Company,  
a corporation, Consolidated Midway Oil Com-  
pany, a corporation, National Pacific Oil Com-  
pany, a corporation, Maricopa Northern Oil  
Company, a corporation, Thirty Thirty-two  
Land Company, a corporation, General Petro-  
leum Company, a corporation, Standard Oil  
Company, a corporation, Tarr & McComb,  
Inc., a corporation, Layne & Bowler Company  
of California, a corporation, Title Insurance  
& Trust Company, a corporation, Maricopa  
Consolidated Oil Company, a corporation,  
Southern Investment Company, a corporation,  
El Dora Oil Company, a corporation, King  
Lumber Company, a corporation, Sesame Oil  
Company, a corporation, Mary F. Francis, a  
widow, L. W. Lowell, James Bloom, William  
S. Kimball, Harry V. Massena, Arthur Whit-  
field, Maude Whitfield, James E. Stone, John  
V. Hoffman, M. E. Hoffman, Edward Fox,  
Charles A. Son, David S. Bachman, William  
R. Dunn, T. J. Green, M. P. Waite, Anna M.  
Waite, J. M. Danziger, Daisy C. Danziger,



A. L. Weil, Florence C. Weil, A. B. Coulson,  
E. A. Wiltsee, G. G. Gillette, Sydney Smith, J.  
R. McKinnie, Orra E. Monnette, M. J. Mon-  
nette, R. P. Davie, Julius Fried, Parker Bar-  
rett, Oma Barrett, J. M. Dunn and Lena  
Dunn,

Defendants.

To the Judges of the District Court of the United  
States for the Southern District of California,  
sitting within and for the Northern Division of  
said District: [7]

The United States of America, by George W.  
Wickersham, its attorney general, presents this, its  
bill of complaint, against Midway Northern Oil Com-  
pany, a corporation; Los Angeles-McKittrick Oil  
Company, a corporation; Consolidated Midway Oil  
Company, a corporation; National Pacific Oil Com-  
pany, a corporation; Maricopa Northern Oil Com-  
pany, a corporation; Thirty Thirty-two Land Com-  
pany, a corporation; General Petroleum Company,  
a corporation; Standard Oil Company, a corporation;  
Tarr & McComb, Inc., a corporation; Layne & Bowler  
Company of California, a corporation; Title Insur-  
ance & Trust Company, a corporation; Maricopa  
Consolidated Oil Company, a corporation; Southern  
Investment Company, a corporation; El Dora Oil  
Company, a corporation; King Lumber Company, a  
corporation; Sesame Oil Company, a corporation;  
Mary F. Francis, a widow; L. W. Lowell, James  
Bloom, William S. Kimball, Harry V. Massena, Ar-  
thur Whitfield, Maude Whitfield, James E. Stone,  
John V. Hoffman, M. E. Hoffman, Edward Fox,

Charles A. Son, David S. Bachman, William R. Dunn, T. J. Green, M. P. Waite, Anna M. Waite, J. M. Danziger, Daisy C. Danziger, A. L. Weil, Florence G. Weil, A. B. Coulson, E. A. Wiltsee, G. G. Gillette, Sydney Smith, J. R. McKinnie, Orra E. Monnette, M. J. Monnette, R. P. Davie, Julius Fried, Parker Barrett, Oma Barrett, J. M. Dunn and Lena Dunn, defendants, and citizens and residents, respectively, of the places in the next succeeding paragraph of this bill set forth, and in that behalf the plaintiff complains and alleges:

I.

Defendant Midway Northern Oil Company now is, and at all of the times hereinafter mentioned as to it was, a corporation organized and existing under the laws of the former territory, now state of Arizona, and a resident and citizen of said state, [8] with an office for the transaction of business within the southern district of California.

Defendant Los Angeles-McKittrick Oil Company now is, and at all of the times hereinafter mentioned as to it was, a corporation organized and existing under and by virtue of the laws of the former territory, now state, of Arizona, and a resident and citizen of said state, with an office for the transaction of business at the city of Los Angeles, California.

Defendant Consolidated Midway Oil Company now is, and at all of the times hereinafter mentioned as to it was, a corporation organized and existing under and by virtue of the laws of the former territory, now state, of Arizona, and a resident and citizen of said state, with an office for the transac-

tion of business at the City of Los Angeles, California.

Defendant National Pacific Oil Company now is, and at all of the times hereinafter mentioned as to it was, a corporation organized and existing under and by virtue of the laws of the State of California, and a resident and citizen of said state, with its office and principal place of business at Los Angeles, California.

Defendant Maricopa Northern Oil Company now is, and at all of the times hereinafter mentioned as to it was, a corporation organized and existing under and by virtue of the laws of former territory, now state of Arizona, and a resident and citizen of said state, with an office for the transaction of business at the City of Los Angeles, California.

Defendant Thirty Thirty-two Land Company now is, and at all of the times hereinafter mentioned as to it was, a corporation organized and existing under and by virtue of the laws of the State of California, and a resident and citizen of said state with its office and principal place of business at Los Angeles, California. [9]

Defendant General Petroleum Company now is, and at all of the times hereinafter mentioned as to it was, a corporation organized and existing under and by virtue of the laws of the State of California, and a resident and citizen of said state, with an office for the transaction of business at the City of Los Angeles.

Defendant Standard Oil Company now is, and at all of the times hereinafter mentioned as to it was,



a corporation organized and existing under the laws of the State of California, and a resident and citizen of said state, with its office and principal place of business at Los Angeles, California.

Defendant Tarr & McComb, Inc., now is, and at all of the times hereinafter mentioned as to it was, a corporation organized and existing under and by virtue of the laws of the State of California, and a resident and citizen of said state, with its principal place of business at Los Angeles, California.

Defendant Layne & Bowler Company of California now is, and at all of the times hereinafter mentioned as to it was, a corporation organized and existing under and by virtue of the laws of the State of California, and a resident and citizen of said state, with its principal place of business at Los Angeles, California.

Defendant Title Insurance & Trust Company now is, and at all of the times hereinafter mentioned as to it was, a corporation organized and existing under and by virtue of the laws of the State of California, and a resident and citizen of said state, with its principal place of business at Los Angeles, California.

Defendant Maricopa Consolidated Oil Company now is, and at all of the times hereinafter mentioned as to it was, a corporation organized and existing under and by virtue of the laws of the formre territory, now state, of Arizona, and a resident [10] and citizen of said state, with an office for the transaction of business at the city of Los Angeles, California.

Defendant Southern Investment Company now is, and at all of the times hereinafter mentioned as to it was, a corporation organized and existing under and by virtue of the laws of the State of California, and a resident and citizen of said state, with its principal place of business at Los Angeles, California.

Defendant El Dora Oil Company now is, and at all of the times hereinafter mentioned as to it was, a corporation organized and existing under and by virtue of the laws of the former territory, now state, of Arizona, and a resident and citizen of said state, with an office for the transaction of business at Los Angeles, California.

Defendant King Lumber Company now is, and at all of the times hereinafter mentioned as to it was, a corporation organized and existing under and by virtue of the laws of the State of California, and a resident and citizen of said state.

Defendant Sesame Oil Company now is, and at all of the times hereinafter mentioned as to it was, a corporation organized and existing under and by virtue of the laws of the state of California, and a resident and citizen of said state.

Defendant Mary F. Francis now is, and at all times since the 16th day of January, 1909, has been, a widow, and a resident and citizen of the State of California.

Each of the defendants, other than the defendants heretofore in this paragraph specifically named and mentioned, is a resident and citizen of the State of California.

Plaintiff is informed and believes, and therefore al-

leges that defendants Arthur Whitfield and Maude Whitfield are husband and wife, defendants John V. Hoffman and M. E. Hoffman are husband and wife, defendants M. P. Waite and Anna M. Waite are husband [11] and wife, defendants J. M. Danziger and Daisy C. Danziger are husband and wife, defendants A. L. Weil and Florence G. Weil are husband and wife, defendants Parker Barrett and Oma Barrett are husband and wife, defendants J. M. Dunn and Lena Dunn are husband and wife.

Certain of the defendants are described herein otherwise than by their christian names for the reason that the christian names of said defendants are unknown to the plaintiff.

## II.

For more than fifty years last past, this plaintiff, the United States of America, has continuously been and now is the sole and exclusive owner in fee of the following described real property, land and premises situated in the county of Kern, State of California, and more particularly described as follows, to wit:

The northwest quarter of Section thirty-two, Township twelve north, Range twenty-three west, San Bernardino meridian, and of the mineral oil, petroleum, asphaltum, gas and all minerals and substances therein or thereunder contained. This plaintiff, the United States of America, is now and has been continuously, during all of the said time last hereinbefore mentioned, entitled to the full, free and exclusive possession of said real property, land and premises, and of all minerals and substances



contained therein or thereunder.

### III.

Except as hereinafter mentioned, said described land and premises and the whole thereof, was at all times in this bill mentioned, and is now, public land of this plaintiff, and a portion of the public domain of the United States. Said land and premises contains mineral oil, commonly known as petroleum, in large and paying quantities, and is oil-bearing land, [12] chiefly valuable for, and on account of, the mineral oil or petroleum therein contained. Said land is of the value of five thousand dollars per acre, said value being based on the mineral oil or petroleum therein contained. Said land and premises has not now, nor has it at any time had, any value whatever for any other mineral than mineral oil or petroleum, said mineral oil or petroleum being the only mineral therein contained.

### IV.

No valuable mineral other than mineral oil or petroleum has ever at any time been discovered in or on or under said land and premises or any part thereof.

No discovery of mineral oil or petroleum or gas was or ever had been made in or under said land and premises or any part thereof at any time prior to the 6th day of July, 1910. On said last-mentioned date mineral oil or petroleum was for the first time found in paying quantities in and under said land and premises at a depth of about two thousand feet, as is hereinafter fully set forth.

### V.

No valid location or entry of or claim to said land

and premises or any part thereof, under any law of the United States providing for the location, entry or disposal of the mineral or nonmineral public lands of the United States, was ever at any time prior to the 27th day of September, 1909, made by the defendants herein or by any of them or by any other person or persons or at all.

Each and every and all of the claims of the defendants herein and of each of them, of, in or to said land and premises or the mineral oil, petroleum or gas contained therein or thereunder are based solely upon pretended placer mining locations [13] claimed to have been made under and by virtue of the laws of the United States relating to placer mining claims having for their object the development of said land and premises as oil and petroleum bearing land and not as containing any other mineral or minerals. Said land and premises was never, at any time, located or claimed by the defendants herein or by either or any of said defendants for any mineral or minerals, other than mineral oil or petroleum and gas. Said defendants did not, nor did either or any of them, ever, at any time, enter into possession or occupy said land and premises, or any part thereof, or do, or perform, any exploration or work, with the intention or for the purpose in good faith of developing said land and premises, or any part thereof, for any mineral or minerals, other than mineral oil or petroleum or gas.

## VI.

On the 27th day of September, 1909, and at all times prior and up to the first day of March, 1910,

the said land and premises heretofore in paragraph II of this bill particularly described and the whole thereof, was in the full, free, open and exclusive possession of this plaintiff, and the defendants herein were not, nor was either, or any of them, on said 27th day of September, 1909, or at any time prior to the first day of March, 1910, an occupant or claimant of, or in the possession of, said land and premises, or any part thereof. Said defendants were not, nor was either or any of them nor any other person or persons, on the 27th day of September, 1909, or at any time, or at all, prior to the 6th day of March, 1910, in the diligent, or any prosecution of work upon said land and premises, or any part thereof, leading to the discovery of oil, petroleum or gas or any other mineral or mineral deposits in, upon or under said land, or any part thereof.

No work of exploration, for the purpose of discovery or [14] development of the oil, petroleum or gas, or any other mineral or minerals or deposits of the same, on or in or under said land or any part thereof, was ever, at any time, prior to the 6th day of March, 1910, commenced or prosecuted in good faith, or otherwise, or at all, by the said defendants, or either, or any of them, or by any other person or persons.

## VII.

On the 14th day of September, 1908, the Secretary of the Interior of the United States of America, by virtue of the power and authority reposed in him by law, duly and regularly withdrew a large body of land of the same general character as the land



hereinbefore in paragraph II of this bill particularly described, and including the said land and premises in paragraph II of this bill particularly described, from agricultural entry and reserved the same from settlement, entry, or purchase, under the agricultural land laws of the United States, for the purpose of examination and classification of said lands by the United States geological survey.

On the 4th day of June, 1909, the said land particularly described in paragraph II hereof, to wit: The northwest quarter of Section thirty-two, Township twelve north, Range twenty-three west, San Bernardino meridian, together with other lands in the vicinity thereof, all included in the said order of withdrawal of September 14th, 1908, aforesaid, was, in accordance with law, duly and regularly reported and classified as oil and petroleum bearing land by the United States geological survey. Said classification was duly and regularly approved by the Secretary of the Interior on the 9th day of June, 1909, and said lands last above described and in particular the said land particularly described in paragraph II of this bill, ever since said 9th day of June, 1909, have continued to be, and are [15] now, classified as, and held to be, mineral oil and petroleum lands. Said order of withdrawal of September 14, 1908, ever since said date has been and still is in full force and effect.

#### VIII.

On the 27th day of September, 1909, the President of the United States, acting by and through the Secretary of the Interior, and by authority of law, and in

pursuance of the power legally invested in him so to do, did duly and regularly withdraw said land and premises described in paragraph II of this bill, and the whole thereof, from mineral exploration and from all forms of location, settlement, selection, filing, entry or disposal under the mineral or nonmineral public land laws of the United States, and reserved the same for public purposes, and since said last mentioned date none of said land has been subject to exploration for minerals or to the initiation of any right under any of the public land laws of the United States.

On the second day of July, 1910, the President of the United States, under authority of law, and by virtue of the power and authority vested in him so to do, and especially in pursuance of the act of Congress approved June 25, 1910, entitled: "An Act to Authorize the President of the United States to Make Withdrawal of Public Lands in Certain Cases" (36 Stats. 847), did duly and regularly ratify, confirm and continue in full force and effect the said previous order of withdrawal and reservation under and by which said land and premises was withdrawn and reserved on said 27th day of September, 1909, as aforesaid, and did further withdraw and reserve said land and premises, and the whole thereof, from mineral exploration and from all forms of settlement, location, sale, entry or disposal under the mineral or nonmineral public land laws of the United States, subject only to the provisions, limitations, exceptions [16] and conditions contained in said act of Congress above mentioned. Said last-mentioned with-

drawal and reservation ever since said second day of July, 1910, has been, and now is, in full force and effect, and covers and includes said land and premises hereinbefore in paragraph II particularly described.

### IX.

Notwithstanding the premises, and in violation of the proprietary and other rights of this plaintiff, and in violation of the laws of the United States and the lawful orders and proclamations of the President of the United States, the defendants herein, subsequent to the first day of March, 1910, entered upon said land and premises, and pretended to acquire mineral rights therein, and have committed and are now committing trespass and waste thereupon to the great and irreparable injury of this plaintiff, as is more fully hereinafter set forth.

### X.

On or about the 6th day of March, 1910, defendant Los Angeles-McKittrick Oil Company wilfully, wrongfully, without right and without the consent of and against the will of this plaintiff, and in violation of said order of withdrawal of date September 27, 1909, entered into the possession of said lands and premises in paragraph II of this bill particularly described for the purpose of prospecting and developing the same for mineral oil and petroleum, and extracting said mineral oil and petroleum therefrom, and commenced drilling operation upon said lands and premises or some part thereof. While said drilling operations were being conducted by defendant Los Angeles-McKittrick Oil Company, to wit, on or about



the 22d day of April, 1910, the defendant Midway Northern Oil Company, in violation of said order of withdrawal of September 27th, 1909, wrongfully, without right and without the consent of and against [17] the will of this plaintiff, under some agreement with said defendant Los Angeles-McKittrick Oil Company, entered into the possession of said lands and premises and took charge of said drilling operations, and the tools, machinery and appliances used in connection therewith, and continued the drilling operations theretofore commenced by defendant Los Angeles-McKittrick Oil Company, and said defendant Midway Northern Oil Company and its agents, servants and employees wrongfully and in violation of said orders of withdrawal of September 27th, 1909, and July 2, 1910, continued said drilling operations and drilled and constructed an oil well on said land, in which said well oil was discovered on, but not before, the 6th day of July, 1910. Said defendant Midway Northern Oil Company ever since said 6th day of July, 1910, has continued to and does now extract, take and appropriate to its own use, large quantities of valuable mineral oil and petroleum belonging to plaintiff from said land and premises by means of said well and other wells.

Plaintiff is informed and believes, and therefore states the fact to be, that defendants Los Angeles-McKittrick Oil Company and Midway Northern Oil Company entered into the possession of said land and premises, and commenced and continued drilling said wells and taking and extracting said mineral oil and petroleum therefrom, and appropriating the

same, as aforesaid, claiming the right so to do, under and by virtue of one or more of the following three pretended placer mining locations:

## 1.

That certain pretended placer mining location under and by which the whole of the land and premises in paragraph II of this bill particularly described was and is claimed (as appears by the notice of said pretended location, dated February 15, 1909, and filed for record in the office of the county recorder [18] of Kern County, California, on February 1st, 1910) to have been located on the 15th day of February, 1909, as the "Lone Star" placer mining claim, under the placer mining laws of the United States, by an association of eight persons, to wit: The defendants Arthur Whitfield, Maude Whitfield and James E. Stone, and five other persons, to wit: Lemuel Karns, Alice Gray, John P. McPhaul and C. C. Lary and H. H. McPhaul (said eight persons are hereinafter referred to as and called the "Lone Star" Locators).

## 2.

That certain pretended placer mining location under and by which the whole of said land and premises in paragraph II of this bill particularly described was and is claimed (as appears by the notice of said pretended location dated March 18, 1901, and filed for record in the office of the county recorder of Kern County, California, December 30, 1904) to have been located on the 18th day of March, 1901, as the "Hermosa" placer mining claim, under the placer mining laws of the United States, by an asso-

ciation of eight persons, to wit: Mrs. W. L. Hobbs, W. L. Allen, Maude Allen, Frankie Francis, George E. Francis, Louise Francis, Frank P. Francis and Albert Brown. (Said eight persons are hereinafter referred to as and called the "Hermosa" Locators.)

## 3.

That certain pretended placer mining location under and by which the whole of said land and premises in paragraph II of this bill particularly described was and is claimed (as appears from the notice of said pretended location dated July 7th, 1910, and filed for record in the office of the county recorder of Kern county, California, August 6, 1910) to have been located on the 7th day of July, 1910, as the "Hermosa" placer mining [19] claim, under the placer mining laws of the United States, by an association of eight persons, to wit, the four defendants, Edward Fox, Charles A. Son, David S. Bachman and Arthur Whitfield, and four other persons, to wit, Charles Dickinson, John Patterson, E. A. Whitten and B. M. Howe. (Said eight persons are hereinafter referred to as and called the Second "Hermosa" Locators.)

And under and by virtue of divers mesne pretended conveyances, leases, subleases and agreements from said "Lone Star" Locators, "Hermosa" Locators and Second "Hermosa" Locators, and their pretended successors in interest, to said defendants Los Angeles-McKittrick Oil Company and Midway Northern Oil Company.

## XI.

On or about the 11th day of March, 1910, defendant



Consolidated Midway Oil Cimpany willfully, wrongfully, without right and without the consent of and against the will of this plaintiff, and in violation of said order of withdrawal of date September 27, 1909, entered into the possession of said land and premises in paragraph II of this bill particularly described for the purpose of prospecting and developing the same for mineral oil and petrolenm, and extracting said mineral, oil and petroleum therefrom, and commenced drilling operations upon said land and premises or some part thereof. Defendants Consolidated Midway Oil Company and National Pacific Oil Company and their agents, servants and employees, wrongfully and in violation of said orders of withdrawal of September 27, 1909, and July 2, 1910, continued said drilling operations and drilled and constructed an oil well on said land, in which said well oil was discovered on or about, and not before, the [20] 1st day of April, 1911. Said defendants Consolidated Midway Oil Company and National Pacific Oil Company, ever since said 1st day of April, 1911, have continued to, and do now, take, extract and appropriate to their own use, large quantities of valuable mineral oil and petroleum from said land and premises, by means of said well and other wells.

Plaintiff is informed and believes, and therefore states the fact to be, that defendants Consolidated Midway Oil Company and National Pacific Oil Company entered into the possession of said land and premises, and commenced and continued drilling said wells and taking and extracting said oil and petrol-

eum therefrom, and appropriating the same, as aforesaid, claiming the right so to do under and by virtue of one or more of the following two pretended placer mining locations, to wit:

1.

That certain pretended placer mining location under and by which the whole of said land and premises in paragraph II of this bill particularly described was and is claimed (as appears from the notice of said pretended location dated January 1st, 1909, and filed for record in the office of the county recorder of Kern county, California, February 2, 1910) to have been located on the 1st day of January, 1909, as the "Warrior No. 1," placer mining claim, under the placer mining laws of the United States by an association of eight persons, to wit: The five defendants, Julius Fried, Parker Barrett, Oma Barrett, J. M. Dunn and Lena Dunn, and three other persons, to wit, Edward Haigh, Emma Haigh and W. F. O'Leary. (Said eight persons are hereinafter referred to as and called the "Warrior No. 1" Locators.)

2.

That certain pretended placer mining location under and by which the whole of said land and premises in paragraph II [21] of this bill particularly described was and is claimed (as appears from the notice of said pretended location dated June 29, 1910, and filed for record in the office of the county recorder of Kern county, California, July 22, 1910) to have been located on the 29th day of June, 1910, as the "Luck No. 2" placer mining claim, under the

placer mining laws of the United States, by an association of *eight* persons, to wit, the defendants, E. A. Wiltsee, G. G. Gillette, Sydney Smith, J. R. McKinnie, Orra E. Monnette and R. P. Davie. (said *eight* persons are hereinafter referred to as and called the "Luck No. 2" Locators.)

And under and by virtue of divers mesne pretended conveyances, leases, subleases and agreements from said "Warrior No. 1" Locators and said "Luck No. 2" Locators, and their pretended successors in interest, to said defendants, Consolidated Midway Oil Company and National Pacific Oil Company.

## XII.

On or about the 31st day of October, 1910, defendant Maricopa Northern Oil Company wilfully, wrongfully, without right and without the consent of and against the will of this plaintiff, and in violation of said orders of withdrawal of September 27, 1909, and July 2, 1910, entered into the possession of said land and premises in paragraph II of this bill particularly described, for the purpose of prospecting and developing the same for mineral oil and petroleum, and extracting said mineral oil and petroleum therefrom and commenced drilling operations upon said land and premises in paragraph II of this bill particularly described, and continued said drilling operations and drilled and constructed an oil well on said land and premises in which said well oil was discovered on or about, and not before, the 1st day of June, 1911. Said defendant Maricopa [22] Northern Oil Company ever since said 1st day of June, 1911, has continued to, and does now, extract



and take and appropriate to its own use large quantities of valuable mineral oil and petroleum belonging to this plaintiff, from said land and premises, by means of said well and other wells.

Plaintiff is informed and believes, and therefore states the fact to be, that defendant Maricopa Northern Oil Company entered into the possession of said land and premises, and commenced and continued the drilling of said wells, and took and extracted and appropriated said mineral oil and petroleum therefrom, as aforesaid, claiming the right so to do under and by virtue of one or both of the following two pretended placer mining locations, to wit:

Those two certain pretended placer mining locations, to wit: the "Hermosa" placer mining claim, claimed to have been located on March 18, 1901, by the "Hermosa" Locators, and the "Hermosa" placer mining claim, claimed to have been located on July 7th, 1910, by the Second "Hermosa" Locators, as fully set forth in paragraph ~~XI~~ of this bill,

X

(Amended per minute order of January 27, 1913. C. E. Scott, Deputy Clerk.)

and under and by virtue of divers mesne pretended conveyances, leases, subleases and agreements from said "Hermosa" Locators and Second "Hermosa" Locators, and their pretended successors in interest, to said defendant Maricopa Northern Oil Company.

XIII.

On the 28th day of July, 1910, the defendants, L. W. Lowell, James Bloom, William S. Kimball, Harry V. Massena, Arthur Whitfield, Maude Whitfield and James E. Stone, together with one F. E.

Borton, claiming to be the then owners of the [23] said pretended "Lone Star" placer mining claim hereinbefore mentioned, embracing said land and premises in paragraph II of this bill described, and to have acquired all of the claimed rights and interests of said "Lone Star" Locators in and to said pretended mining claim, land and premises, and claiming, under and by virtue of the laws of the United States relating to placer mining claims to be entitled to a patent from plaintiff to the whole of said land and premises and claiming to have discovered, through and by their lessees and agents, mineral oil or petroleum in paying quantities in and upon said land, made and filed with the register and receiver of the United States land office at Los Angeles, California, their application, Serial No. 011,146, under the mining laws, for patent to said land and premises and the whole thereof, from this plaintiff. Said application for patent was based upon an alleged discovery of mineral oil or petroleum and of no other mineral, and the discovery relied upon in said application for patent was the discovery made upon said land and premises on the 6th day of July, 1910, as heretofore, in paragraph X of this bill, set forth and described, and no other. On said 28th day of July, 1910, said application for patent was duly and regularly rejected by said register and receiver of said Los Angeles land office and thereafter proceedings were had, in accordance with law, and the rules and regulations of the department of the interior and the general land office, in such cases made and provided, and the mat-

ter duly and regularly appealed to the Commissioner of the General Land Office by said applicants from the said decision of said register and receiver. The said Commissioner of the General Land Office, on the 4th day of April, 1911, duly and regularly gave, made and rendered [24] his decision, affirming the action of said register and receiver, and rejecting said application for patent. Thereafter, the said applicants in the manner and form required by law appealed from said decision of the Commissioner of the General Land Office, as aforesaid, to the Secretary of the Interior. Said appeal was duly and regularly in the mode and manner authorized by law and by the rules and regulations of the department of the interior and the general land office, presented and submitted to the said Secretary of the Interior, for his decision and judgment, and the said Secretary of the Interior, on 29th day of November, 1911, duly and regularly gave, made and rendered his decision and judgment, affirming the said action and decision of the Commissioner of the General Land Office, and rejected the said application for patent. Said decision and judgment of the Secretary of the Interior has become and is a final judgment and said application for patent has been and is finally rejected and disallowed.

On the 1st day of August, 1910, defendant, Julius Fried, claiming to be the then owner of said pretended "Warrior No. 1" placer mining claim hereinbefore mentioned, embracing the land and premises in paragraph II of this bill particularly described, and to have acquired all of the alleged rights



and interests of the said "Warrior No. 1" Locators, and claiming, under and by virtue of the laws of the United States relating to placer mining claims, to be entitled to a patent to the whole of said land and premises and claiming to have discovered mineral oil and petroleum in paying quantities in and upon said land, made and filed with the register and receiver of the United States Land Office at Los Angeles, California, his application, Serial No. 011,162, under the mining laws of the United States, for patent to said land and premises and the whole thereof, as an oil placer mining claim. Said application for patent was based upon an alleged discovery of mineral oil [25] or petroleum and of no other mineral. Thereafter, and after proceedings duly and regularly had and taken in the matter of said application, and in accordance with law and the rules and regulations of the department of the interior in such cases made and provided, said application was, on the 13th day of July, 1912, duly and regularly, finally rejected and disallowed by said department of the interior.

On the 17th day of August, 1910, defendants, Charles A. Son and David S. Bachman, claiming to be the then owners of the said pretended "Hermosa" placer mining claim, alleged to have been located July 7, 1910, by the said Second "Hermosa" Locators, as hereinbefore in paragraph X set forth, embracing the land and premises in paragraph II of this bill described, and to have acquired all of the alleged rights and interests of the said Second "Hermosa" Locators, and claiming under and by virtue

of the laws of the United States relating to placer mining claims, to be entitled to a patent to the whole of said land and premises, and to have discovered mineral oil and petroleum in paying quantities in and upon said land, made and filed with the register and receiver of the United States Land Office in Los Angeles, California, their application, Serial No. 011,246, under the mining laws of the United States for patent to said land and premises, and the whole thereof, as an oil placer mining claim. Said application for patent was based upon an alleged discovery of mineral oil or petroleum and of no other mineral. Thereafter, and after proceedings duly and regularly had and taken in the matter of said application, and in accordance with law and the rules and regulations of the department of the interior in such cases made and provided, said application was, on the 22d day of October, 1912, duly and regularly, finally rejected and disallowed by said department of the interior.

On the 28th day of October, 1911, defendant, Mary F. [26] Francis, claiming to be the then owner of said pretended "Hermosa" placer mining claim, hereinbefore mentioned, embracing the land and premises in paragraph II of this bill described, and to have acquired all of the alleged rights and interests of the "Hermosa" Locators, and claiming, under and by virtue of the laws of the United States relating to placer mining claims, to be entitled to patent to the whole of said land and premises, and to have discovered mineral oil and petroleum in paying quantities in and upon said land, made and filed with the register and receiver of the United States Land

Office at Los Angeles, California, her application, Serial No. 014,132, under the mining laws of the United States, for patent to said land and premises, and the whole thereof, as a placer mining claim. Said application for patent was based upon an alleged discovery of mineral oil or petroleum and of no other mineral. Thereafter, and after proceedings duly and regularly had and taken in the matter of said application, and in accordance with law and the rules and regulations of the department of the interior in such cases made and provided, said application was, on the 19th day of January, 1912, duly and regularly, finally rejected and disallowed by said department of the interior.

Each and all of the aforesaid applications for patent have been disallowed and finally rejected by the department of the interior of the United States and said department of the interior has heretofore, by virtue of the power and authority invested in it so to do, duly and regularly adjudged and decreed that each and all of the claims of the said applicants for patent were void in law and without right, on the ground and for the reason, among others, that said land and premises has been at all times from and after September 27th, 1909, lawfully withdrawn from all forms of location, settlement, selection, filing, entry or disposal under the mineral or nonmineral [27] public land laws of the United States and not subject to exploration for minerals or to the initiation of any right under any of the public land laws of the United States, and that neither of said applicants nor any other person was, on the 27th day of Septem-



ber, 1909, or at any time prior thereto, a *bona fide* occupant or claimant of said land or engaged in the diligent prosecution of work leading to discovery of or for the purpose of discovering oil or gas upon said land.

#### XIV.

Each and all of the claims of the defendants in this bill mentioned of any rights or interests in said land and premises, or any part thereof, as well as the claimed rights of each and all of said defendants to take and extract from said land and premises, or any part thereof, mineral oil, petroleum or gas, or any other mineral, and to appropriate the same, is and are based and claimed entirely upon an alleged compliance by some one or more of said defendants, and their predecessors in interest, respectively, with the laws of the United States relating to placer mining claims, and each and all of the defendants de-rain and claim their alleged interests and rights solely and exclusively from one or more of the five pretended placer mining locations hereinbefore set forth, and more particularly described in Paragraphs X, XI and XII of this bill.

Plaintiff further states that the records of the County of Kern, State of California, show that the claimed rights and interests of the locators of said five pretended placer mining claims, in and to said land and premises, have, since the dates of the respective notices of locations of said pretended claims, been conveyed to and are now claimed by the following named defendants, respectively, to wit: [28]

“LONE STAR,”

William Kimball,  
Arthur Whitfield,  
Maud Whitfield,  
Harry V. Massena,  
James Bloom,  
L. W. Lowell,  
James E. Stone.

“WARRIOR NO. 1,”

David S. Bachman,  
Charles A. Son,  
M. P. Waite,  
Anna M. Waite,  
Florence G. Weil,  
A. L. Weil,  
J. M. Danziger,  
Daisy C. Danziger.

“HERMOSA” (claimed to have been located March  
18, 1901),

Mary F. Francis.

“LUCK NO. 2,”

E. A. Wiltsee,  
G. G. GILLETTE,  
Sydney Smith,  
J. R. McKinnie,  
J. M. Danziger,  
Orra E. Monnette,  
M. J. Monnette,  
R. P. Davie,

“HERMOSA” (Claimed to have been located July 7,  
1910),

Charles A. Son and  
David S. Bachman,

subject to divers mesne purported leases, subleases, liens, and agreements.

The instruments recorded in said county of Kern purporting to affect said land and premises in paragraph II of this bill described, or some part thereof, are so numerous and conflicting that it is impossible for this plaintiff to ascertain therefrom the nature or extent of the interests claimed therein by either or any of the defendants herein, except as herein stated, hence a full discovery is sought herein.

Plaintiff further states that prior and up to the 1st day of May, 1911, the said pretended locators and claimants of each of [29] the aforesaid pretended placer mining claims, and the successors in interest of said locators, each, respectively, claimed the whole of said land and premises in paragraph II of this bill described, and the exclusive right to extract mineral oil, petroleum and gas therefrom, adverse to and in conflict with each of the other said pretended locations.

Plaintiff is informed and believes, and therefore states the fact to be that on or about said 1st day of May, 1911, an agreement purporting to settle said conflicting claims was made and entered into; that by the terms of said agreement, defendants Maricopa Northern Oil Company, National Pacific Oil Company, Midway Northern Oil Company and Consolidated Midway Oil Company, were given the full and complete possession of the whole of said land and premises hereinbefore in paragraph II particularly described, with the right to develop and extract the mineral oil, petroleum and gas therefrom; that de-



fendant Thirty Thirty-Two Land Company claims some right, title or interest in said land and premises under said alleged agreement.

Plaintiff is further informed and believes, and therefore states the fact to be, that said agreement purported to compromise and define the conflicting interests of each and all of the parties entering into the same, but as to the terms or conditions of said agreement, the parties thereto, or the respective parts of said land and premises allotted, and to whom, plaintiff has no knowledge or information, and for that reason a full discovery is sought herein. Said agreement was never recorded in the office of the county recorder of Kern County, but has at all times been kept secret.

#### XV.

Defendants Midway Northern Oil Company, Consolidated Midway Oil Company, National Pacific Oil Company and Maricopa Northern Oil Company, are now in the actual possession of the [30] said land and premises heretofore in paragraph II of this bill particularly described. The precise parts or portions of said land and premises in the possession of and claimed by each of the respective defendants in this paragraph mentioned, is to plaintiff unknown. Each of said last-named defendants does now claim the right to the possession of a part or the whole of said land and premises, and the right to drill for and extract oil, petroleum and gas therefrom, and to convert the same to its own use. Plaintiff leaves said defendants to set forth in this suit their respective claims of interest.

Said last-named four defendants have, since said 6th day of July, 1910, wrongfully and without the consent of the plaintiff, and in violation of said orders of withdrawal hereinbefore mentioned, extracted and taken from said lands and premises, or some part or portion thereof, and sold or otherwise appropriated to its own use, large quantities of oil and petroleum. Plaintiff does not know the exact amount of or value of said oil or petroleum taken, extracted and sold or appropriated by said last named defendants, respectively, or in the aggregate, but is informed and believes and therefore states that, in the aggregate, it exceeds two hundred thousand barrels and is and was of the value of more than one hundred thousand dollars. Plaintiff cannot ascertain said facts except by an accounting and discovery, and therefore a full discovery in the premises is sought herein.

Each of said last-named four defendants is now extracting and appropriating to its own use, and threatens to and will, unless restrained by this Court, continue to extract and appropriate to its own use, large and increasing quantities of the said mineral oil and petroleum contained in and under said land or some part thereof, and threatens to and will, unless restrained by this Court, otherwise commit trespass and waste [31] upon said land and premises, or some part thereof, to the great and irreparable injury of this plaintiff.

#### XVI.

Plaintiff is informed and believes, and upon such information and belief states the fact to be that each

of the defendants, Los Angeles-McKittrick Oil Company, Mary F. Francis, L. W. Lowell, James Bloom, William S. Kimball, Arthur Whitfield, Maud Whitfield, James E. Stone, Harry V. Massena, John V. Hoffman, M. E. Hoffman, Edward Fox, Charles A. Son, David S. Bachman, M. P. Waite, Anna M. Waite, J. M. Danziger, Daisy C. Danziger, A. L. Weil, Florence G. Weil, E. A. Wiltsee, G. G. Gillette, Sydney Smith, J. R. McKinnie, Orra E. Monnette, M. J. Monnette, R. P. Davie, Julius Fried, Parker Barrett, Oma Barrett, J. M. Dunn and Lena Dunn, has heretofore, and since the 6th day of July, 1910, wrongfully and without the consent of this plaintiff, and in violation of said orders of withdrawal hereinbefore mentioned, extracted and taken from some part or portion of said land and premises and sold or otherwise appropriated to his, her or its own use, large quantities of valuable oil and petroleum. Plaintiff is not advised of and does not know the exact amount or value of said oil or petroleum taken, extracted or appropriated by said last-named defendants, or either of them, and cannot ascertain said facts except by an accounting and discovery herein, and therefore a full discovery in the premises from each and all of said defendants is hereby sought herein.

Each of said defendants in this paragraph named threatens to and will, unless restrained by this Court, continue to extract and appropriate, or cause to be extracted and appropriated to his, her or its own use, large quantities of the mineral [32] oil and petroleum contained in and under said land, or some part



thereof, and otherwise commit trespass and waste upon said land, or some part thereof, to the great and irreparable injury of this plaintiff.

#### XVII.

Large quantities of said oil and petroleum so wrongfully extracted and taken from said land and premises as aforesaid, have been sold or otherwise disposed of and delivered to the defendants, Standard Oil Company and Tarr & McComb, Inc., by the said defendants who, as aforesaid, have heretofore wrongfully extracted the same from said land and premises. Said defendants, Standard Oil Company and Tarr & McComb, Inc., have, with full knowledge of the premises, received large quantities of said oil and petroleum, so wrongfully taken and extracted from said lands as aforesaid, and have appropriated the same to their own use and to the use of each of them. Plaintiff is not informed of, and does not know, of the exact quantity or value of the oil and petroleum so received by and appropriated to the use of said defendants, Standard Oil Company, and Tarr & McComb, Inc., or either of them. Plaintiff is not advised of and does not know, from what defendant or defendants, Standard Oil Company and Tarr & McComb, Inc., receive said oil and petroleum nor can plaintiff ascertain said facts except by an accounting and discovery in this suit, and therefore a full and complete discovery in the premises as sought and demanded herein.

#### XVIII.

Plaintiff is informed and believes, and upon such information and belief states the fact to be that each

of the defendants in this bill named, other than the defendants Southern Investment Company, William R. Dunn, King Lumber Company, T. J. Green, Layne & Bowler Company of California, Sesame Oil Company, [33] Title Insurance & Trust Company, A. B. Coulson and Tarr & McComb, Inc., claims and asserts some right, title and interest in, or lien upon, said land and premises hereinbefore in paragraph II particularly described, or to some part thereof, and to the mineral oil, petroleum and gas therein contained, either as locator or as successor in interest of one or more of the locators of said pretended placer mining claims, hereinbefore described, by virtue of pretended deed, conveyance or assignment, or otherwise;

That each of the defendants, Southern Investment Company, William R. Dunn, King Lumber Company, T. J. Green, Layne & Bowler Company of California, and Sesame Oil Company, claim and assert some right, title and interest in or to, or lien upon, said land and premises hereinbefore in paragraph II particularly described, or some part thereof, as an attachment creditor or judgment creditor of one or more of the other defendants in this bill named;

That each of the defendants, Midway Northern Oil Company, Los Angeles-McKittrick Oil Company, Consolidated Midway Oil Company, General Petroleum Company, National Pacific Oil Company, Maricopa Northern Oil Company, and El Dora Oil Company, claims some right, title or interest in or to said land and premises hereinbefore in paragraph II particularly described, and in and to the mineral oil,

petroleum and gas therein contained, under and by virtue of one or more of said pretended placer mining locations hereinbefore set forth, and under and by virtue of certain pretended leases, assignments of leases, agreements to convey and conveyances, from the said alleged locators of said pretended placer mining locations, and the successors in interest of said locators, or otherwise; [34]

That defendants, Title Insurance & Trust Company, and A. B. Coulson, claim some right, title or interest in or to, or lien upon, said land and premises particularly described in paragraph II hereof, or some part thereof, under and by virtue of a pretended deed of trust in and by which said deed of trust defendant, Consolidated Midway Oil Company, as party of the first part, purports to convey to said defendant, Title Insurance & Trust Company, as trustee and party of the second part, certain claimed rights and interests in said land and premises as security for the payment of certain promissory notes payable to said defendant, A. B. Coulson, the said A. B. Coulson being the third party to said pretended trust deed. Said trust deed was recorded on the 9th day of March, 1911, in book 243 of trust deeds, page 51, records of Kern County.

Except as hereinbefore in this bill stated, plaintiff has no information of, and does not know the exact nature or extent of any of said claims asserted by the defendants herein, and therefore leaves said defendants to set forth and disclose their respective claims as they may be advised.

#### XIX.

Because of the premises of this bill, none of the



defendants herein have or ever had any right, title or interest in or to, or lien upon, the said land and premises hereinbefore in paragraph II of this bill particularly described, or in or to any part thereof, nor have said defendants, or either of them, any right or interest whatever in or to the mineral oil or petroleum or gas contained in or under said land or any part thereof, nor the right to take or extract oil or petroleum or gas from said land or any part thereof. Each of the claims of the defendants is without right and void as to this plaintiff, and should be so in equity decreed in favor of this plaintiff, and the said claims and each and all of them should be voided by a decree of this Court. [35]

XX.

Plaintiff has no plain, speedy or adequate remedy at law in the premises.

In consideration whereof, and inasmuch as plaintiff is without full and adequate remedy in the premises, save in a court of equity, where matters of this nature are properly cognizable and relievable, plaintiff prays:

1. That said defendants, and each of them, may be required to make full, true and direct answer respectfully to all and singular the matters and things hereinbefore stated and charged and to fully disclose and state their claims to said land and premises described in paragraph II of this bill, and to any and all parts thereof, as fully and particularly as if they had been particularly interrogated thereunto, but not under oath, answer under oath being hereby expressly waived;

2. That the said land and premises of the plaintiff, particularly described in paragraph II hereof, may be declared by this court to have been at all times from and after the 27th day of September, 1909, withdrawn from mineral exploration and from all forms of location, settlement, selection, filing, entry or disposal under the mineral or nonmineral public land laws of the United States;

3. That said defendants, and each of them, may be adjudged and decreed to have no estate, right, title, interest or claim in or to said land and premises described in paragraph II of this bill, or any part thereof, or in or to any mineral or minerals or mineral deposits contained in or under said land or any part thereof; and that all and singular of said land and premises, together with all of the minerals and mineral deposits, including mineral oil, petroleum and gas therein or thereunder contained, may be adjudged and decreed to be the perfect property of this plaintiff, free and clear of the claims of [36] said defendants, and each and every one of them;

4. That each and all of the defendants herein, their officers, agents, servants and attorneys, during the progress of this suit, and thereafter, finally and perpetually may be enjoined from asserting or claiming any right, title, interest, claim or lien in or to the said land and premises, or any part thereof, or in or to any of the minerals or mineral deposits therein or thereunder contained; and that each and all of the defendants herein, their officers, agents, servants and attorneys, during the progress of this suit, and thereafter, finally and perpetually may be enjoined

from going upon any part or portion of said land and premises, and from in any manner using any of said land and premises and from in any manner extracting, removing or using any of the minerals deposited in or under said land and premises, or any part or portion thereof, or any of the other natural products thereof, and from in any manner committing any trespass or waste upon any of said land or with reference to any of the minerals deposited therein or thereunder, or any of the other natural products thereof;

5. That an accounting may be had by said defendants and each and every of them, wherein said defendants, and each of them, shall make a full, complete, itemized and correct disclosure of the quantity of minerals (and particularly petroleum) removed or extracted or received by them or either or any of them, from said land and premises, or any part thereof, and of any and all moneys or other property or thing of value received from the sale or other disposition of any and all minerals extracted from said land and premises or any part thereof, and of all rents and profits received under any sale, lease, transfer, conveyance, contract or agreement concerning said land and premises, or any part thereof; and that the plaintiff [37] may recover from said defendants, respectively, all damages sustained by the plaintiff in the premises;

6. That a Receiver may be appointed by this Court to take possession of said land and premises, and of all wells, derricks, drills, pumps, storage vats, pipes, pipe lines, shops, houses, machinery, tools



and appliances of every character whatsoever thereon, belonging to or in the possession of said defendants, or any of them, which have been used or now are being used in the extracting, storage, transportation, refining, sale, manufacture, or in any other manner in the production of petroleum or petroleum products or other minerals from said land or any part thereof for the purpose of continuing, and with full power and authority to continue, the operations on said land in the production and sale of petroleum and other minerals, and for the preservation, protection and use of the wells, derricks, pumps, tanks, storage vats, pipes, pipe lines, houses, shops, tools, machinery and appliances being used by the defendants, their officers, agents, or assigns in the production, transportation, manufacture or sale of petroleum or other minerals from said land and premises or any part thereof, and that such Receiver may have the usual and general powers vested in receivers of courts of chancery;

7. That plaintiff may have such other and further relief as in equity may seem just and proper.

To the end therefore that this plaintiff may obtain the relief to which it is justly entitled in the premises, may it please your Honors to grant unto the plaintiff a writ or writs of subpoena, issued by and under the seal of this Honorable Court, directed to the said defendants herein, to wit: Midway Northern Oil Company, Los Angeles-McKittrick Oil Company, Consolidated Midway Oil Company, National Pacific Oil Company, Maricopa Northern Oil Company, Thirty Thirty-two Land Company, [38]

General Petroleum Company, Standard Oil Company, Tarr & McComb, Inc., Layne & Bowler Company of California, Title Insurance & Trust Company, Maricopa Consolidated Oil Company, Southern Investment Company, El Dora Oil Company, King Lumber Company, Sesame Oil Company, Mary F. Francis, L. W. Lowell, James Bloom, William S. Kimball, Harry V. Massena, Arthur Whitfield, Maude Whitfield, James E. Stone, John V. Hoffman, M. E. Hoffman, Edward Fox, Charles A. Son, David S. Bachman, William R. Dunn, T. J. Green, M. P. Waite, Anna M. Waite, J. M. Danziger, Daisy C. Danziger, A. L. Weil, Florence G. Weil, A. B. Coulson, E. A. Wiltsee, G. G. Gillette, Sydney Smith, J. R. McKinnie, Orra E. Monnette, M. J. Monnette, R. P. Davie, Julius Fried, Parker Barrett, Oma Barrett, J. M. Dunn and Lena Dunn, therein and thereby commanding them and each of them at a certain time, and under a certain penalty therein to be named, to be and appear before this Honorable Court, and then and there, severally, full, true, and direct answers make to all and singular the premises, but not under oath, answer under oath being hereby expressly waived, and stand to perform and abide by, such order, direction and decree as may be made against them or any of them in the premises and as shall be meet and agreeable to equity.

GEORGE W. WICKERSHAM,  
Attorney General of the United States.

A. I. McCORMICK,  
United States Attorney. [39]

United States of America,  
Southern District of California,  
County of Los Angeles,—ss.

Gratz W. Helm, being first duly sworn, deposes and says: I am now, and have been for more than four years last past an employee and agent of the General Land Office, Department of the Interior of the United States; at all times from and after the 1st day of July, 1910, I have been, and am now, Chief of Field Division of the General Land Office of the United States, assigned to duty in and in charge of the public lands of the said United States, comprised in the Sixth Field Division in the Southern District of California, including the land and premises described in paragraph 2 of the foregoing bill of complaint; during all of said times hereinbefore mentioned, under such employment, I have been engaged in field examinations and other investigations on behalf of the Department of the Interior, with reference to the administration of the public land laws of the United States and the enforcement and protection of the proprietary and other rights of the United States pertaining to said public lands; the acts and transactions referred to in the foregoing bill of complaint with reference to said land in paragraph II thereof described, were investigated by me, as such employee and agent, and under my supervision, direction and control, and in this manner I acquired *knowledge* thereof; I have read the foregoing bill of complaint and know the contents thereof; the same are true of my own knowledge,



except as to the statements therein made on information and belief, and as to those matters, I believe them to be true.

My knowledge of the facts upon which the prayer for temporary relief by injunction and receivership in said bill is based, was obtained from an inspection of the records of the United States Land Office for the Los Angeles Land District, [40] the records of the office of the County Recorder, county of Kern, California, and an inspection and observation of the land described in said bill of complaint, and operations conducted in and upon said land, and upon admissions and statements made by certain of the defendants and their duly authorized officers and agents.

GRATZ W. HELM.

Subscribed and sworn to before me this 23d day of January, 1913.

[Seal]

WM. M. VAN DYKE,  
Clerk U. S. District Court, So. Dist. California. [41]

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**[Motion to Dismiss Bill of Complaint.]**

*In the District Court of the United States, for the  
Southern District of California, Northern Division,  
Ninth Circuit.*

No. 47—CIVIL—IN EQUITY.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

MIDWAY NORTHERN OIL COMPANY, a Corporation,  
Los Angeles-McKittrick Oil Company,

a Corporation, Consolidated Midway Oil Company, a Corporation, National Pacific Oil Company, a Corporation, Maricopa Northern Oil Company, a Corporation, Thirty Thirty-two Land Company, a Corporation, General Petroleum Company, a Corporation, Standard Oil Company, a Corporation, Tarr & McComb, Inc., a Corporation, Layne & Bowler, Company of California, a Corporation, Title Insurance & Trust Company, a Corporation, Maricopa Consolidated Oil Company, a Corporation, Southern Investment Company, a Corporation, El Dora Oil Company, a Corporation, King Lumber Company, a Corporation, Sesame Oil Company, a Corporation, Mary F. Francis, a Widow, L. W. Lowell, James Bloom, William S. Kimball, Harry V. Massena, Arthur Whitfield, Maude Whitfield, James E. Stone, John V. Hoffman, M. E. Hoffman, Edward Fox, Charles A. Son, David S. Bachman, William R. Dunn, T. J. Green, M. P. Waite, Anna M. Waite, J. M. Danziger, Daisy C. Danziger, A. L. Weil, Florence G. Weil, A. B. Coulson, E. A. Wiltsee, G. G. Gillette, Sydney Smith, J. R. McKinnie, Orra E. Monnette, M. J. Monnette, R. P. Davie, Julius Fried, Parker Barrett, Oma Barrett, J. M. Dunn and Lena Dunn,

Defendants.

To the Honorable, the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit: [42]  
 Defendants, National Pacific Oil Company, a cor-

poration, Thirty Thirty-two Land Company, a corporation, General Petroleum Company, a corporation, Charles A. Son, David S. Bachman, J. M. Danziger, Daisy Danziger, A. L. Weil, and Florence G. Weil, by their Solicitor, A. L. Weil, Esq., hereby move that the Bill of Complaint in the above-entitled action, and the whole thereof, be dismissed for insufficiency of fact to constitute a valid cause of action in equity against the defendants in this:

That it appears from said Bill of Complaint that defendants entered on the land described therein prior to April 1st, 1910, and commenced drilling a well thereon for the purpose of discovering oil; that defendants, from said 1st day of April, 1910, were continuously in the diligent prosecution of work, in good faith, leading to the discovery of oil on said land, until the 6th day of July, 1910, when oil was discovered thereon in paying quantities; that defendants were in diligent prosecution of work in good faith leading to discovery of oil on the 2d day of July, 1910, claiming under mineral locations made prior to March 6th, 1910; that the basis of plaintiff's cause of action depends on an alleged withdrawal of the said lands described in plaintiff's Bill of Complaint on the 27th day of September, 1909, by the Honorable, the Secretary of Interior of the United States, and that said alleged withdrawal of said lands from entry on the 27th day of September, 1909, was unconstitutional, void and of no force and effect, and beyond the authority of the said Secretary of Interior, and contrary to the provisions of Chapter 6, of Title 32 of the Revised Statutes of the United



States, and the Act of Congress of February 11th, 1897, 29 Stat. L. 526, and the Acts amending and supplementing the same;

That is further appears that no withdrawal of the mineral [43] in said land was ever made.

A. L. WEIL,

Solicitor for Defendants National Pacific Oil Company, Thirty Thirty-two Land Company, Charles A. Son, David S. Bachman, J. M. Danziger, Daisy C. Danizger, A. L. Weil and Florence G. Weil.

[Endorsed]: No. 47—Civil—In Equity. U. S. District Court, Southern District of California, Northern Division, Ninth District. The United States of America, Plaintiff, vs. Midway Northern Oil Company, a Corporation, et al., Defendants. Motion to Dismiss. Filed Mar. 3, 1913. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. A. L. Weil, Solicitor for Certain Defendants, 1206 Alaska Commercial Building, San Francisco.

Recd. copy of the within Motion to Dismiss this 3d day of March, 1913.

A. I. McCORMICK,

U. S. Attorney. [44]

*In the District Court of the United States, for the  
Southern District of California, Northern Division,  
Ninth Circuit.*

No. 47—IN EQUITY.

THE UNITED STATES OF AMERICA,

Plaintiff,

versus

MIDWAY NORTHERN OIL COMPANY, a Corporation, Los Angeles-McKittrick Oil Company, a Corporation, Consolidated Midway Oil Company, a Corporation, National Pacific Oil Company, a Corporation, Maricopa Northern Oil Company, a Corporation, Thirty Thirty-two Land Company, a Corporation, General Petroleum Company, a Corporation, Standard Oil Company, a Corporation, Tarr & McComb, Inc. a Corporation, Layne & Bowler Company of California, a Corporation, Title Insurance & Trust Company, a Corporation, Maricopa Consolidated Oil Company, a Corporation, Southern Investment Company, a Corporation, El Dora Oil Company, a Corporation, King Lumber Company, a Corporation, Sesame Oil Company, a Corporation, Mary F. Francis, a Widow, L. W. Lowell, James Bloom, William S. Kimball, Harry V. Messena, Arthur Whitfield, Maude Whitfield, James E. Stone, John V. Hoffman, M. E. Hoffman, Edward Fox, Charles A. Son, David S. Bachman, William R. Dunn, T. J. Green, M. P.

Waite, Anna M. Waite, J. M. Danziger, A. L. Weil, Florence G. Weil, A. B. Coulson, E. A. Wiltsee, G. G. Gillette, Sydney Smith, J. R. McKinnie, Orra E. Monnette, M. J. Monnette, R. P. Davie, Julius Fried, Parker Barrett, Oma Barrett, J. M. Dunn and Lena Dunn,  
Defendants.

**Order Allowing Motion to Rehear; Overruling Motions to Dismiss, and Appointing Receiver.**

WHEREAS, Motions to disimiss the bill of complaint in this suit were made by certain of the defendants herein, [45] and on January 3, 1914, at the United States District Court Room in Los Angeles the said motions were argued and submitted before the undersigned United States District Judge; and

WHEREAS, On the 29th day of May, 1914, an opinion was rendered by the undersigned United States Judge holding that said motions to  
M. T. D. dismiss should be granted; and, *and* ordering said bill dismissed and denying the application for the appointment of a Receiver, and

WHEREAS, On the 29th day of June, 1914, the complainant presented a petition to rehear and reverse the said opinion and ruling of the Court, and said petition was, by order of the Court, allowed to be filed, and it was directed that further proceedings in the suit be stayed until the petition to rehear was determined and disposed of; and

WHEREAS, Prior to the time the opinion of the undersigned Judge of the United States District Court was rendered holding that the said motions to



dismiss should be allowed, there were argued and submitted on the 21st day of March, 1914, motions for injunction and for the appointment of a Receiver for the land described in the bill of Complaint herein and the property thereon, and the proceeds of oil and gas extracted therefrom; which said

M. T. D. motions were for the reasons set forth in said opinion, denied;

IT IS NOW, Upon further consideration, and particularly upon consideration of the opinion of the United States Supreme Court rendered on the 23d day of February, 1915, in the case of United States v. Midwest Oil Company, CONSIDERED, ORDERED, and ADJUDGED that the said petition to rehear filed heherin be, and the same is [46]

order  
M. T. D. hereby allowed, and the said ~~opinion~~ of this Court holding that this suit should be dismissed set aside

M. T. D. missed is hereby ~~reversed~~ and the motions of the defendants herein to dismiss are hereby overruled and denied, and each of the said defendants who made said motions to dismiss is allowed five days to file answer in addition to the time allowed by the New Equity Rules. It is also ordered that the order denying the motion for the appointment

M. T. D. of a Receiver be vacated and set aside, and

IT IS FURTHER ORDERED That A. E. Campbell, Esq., be, and he is hereby appointed Receiver of the property described in the bill of complaint herein claimed by the Consolidated Midway Oil Company, the National Pacific Oil Company, Charles A. Son, David S. Bachman, and A. L. Weil, to wit:

The Northwest Quarter of Section Thirty-two,  
Township Twelve North, Range Twenty-three  
West, San Bernardino Meridian,

and of the oil, gas, and all other property of  
or already extracted from said land and still in the possession of  
M. T. D. every kind, situated on said land, de-

fendants, and the defendants, and <sup>^</sup>each  
of them, their agents, attorneys and employees  
are enjoined from removing said oil, gas, or other  
property, or any part thereof from said land, or in  
any manner interfering with the order of this Court,  
and are enjoined from further producing oil from said  
land, except by permission and under the direction of  
the said Receiver.

Said Receiver is directed to receive, and the said  
defendants are directed to surrender to said Receiver  
all moneys in their hands or in the hands of any per-  
son or corporation for them which are the proceeds of  
the sale [47] of oil or gas produced from said  
lands hereinbefore described, and the said Receiver  
is directed to collect any notes, accounts, or other evi-  
dences of debt due or payable on account of oil and  
gas produced from said lands and sold by or for said  
defendants, or any of them.

The said Receiver is given power and directed to  
operate any oil or gas well or wells on said property,  
or to permit them to be operated by the respective  
defendants now in possession of or operating same, or  
who have heretofore operated on said lands; or to  
close said wells, if he deems it necessary or advisable  
to do so in order to conserve the oil and gas in said  
lands and prevent said property from being damaged  
or the oil and gas from being wasted.

The said Receiver is directed to ascertain the quantity of oil and gas heretofore extracted by said respective defendants, and to keep an accurate account of all oil and gas hereafter produced from said lands, and to sell said oil and gas for the best price obtainable.

For the purpose of making an investigation and determining the condition of the wells drilled on said lands, and particularly for the purpose of determining whether water is infiltrating the oil sands or reservoirs on said lands, and for the further purpose of ascertaining the amount of oil and gas heretofore produced, the price at which the same has been sold, and the value thereof, the Receiver is directed and empowered to examine the logs of the wells and the books of account kept [48] by the defendants or any of them in the development and operation of said lands.

For the purpose of preventing damage to said lands by the infiltration of water into the oil sands and otherwise, and for the purpose of protecting and operating the said property, the said Receiver is authorized to employ such assistance and incur such expense, to be paid out of the moneys coming into his hand as Receiver, as he shall deem necessary, subject to the approval of this Court. All moneys coming into the hands of said Receiver, shall, unless otherwise directed by the Court, be deposited in a bank or banks to be selected jointly by the Receiver and the defendants who claim such moneys, or their respective solicitors of record, and the solicitor for the complainant, and such moneys shall be paid out by



the said bank or banks only upon checks signed by said Receiver and by said solicitors of record, or otherwise as may be ordered by this Court.

A bond in the sum of Five Thousand (\$5,000)

Dollars, to be approved by this Court, shall  
within five days from

M. T. D. be given by the Receiver the filing of this

order; provided the solicitor<sup>A</sup> for the complainant or for the defendants, or either of them, may at any time upon one day's notice to counsel for the opposite parties, apply to the Court for an increase in the amount of said bond.

The amount of compensation to be paid to the [49] Receiver in this suit is to be determined hereafter.

April 23,

This ~~March~~, 1915.

M. T. DOOLING,  
United States District Judge.

[Endorsed]: No. 47—Civ. U. S. District Court, Southern District of California, Northern Division. United States of America, vs. Midway Northern Oil Co. et al. Order Allowing Motion to Rehear, Overruling Motions to Dismiss and Apptg. Receiver Filed Apr. 26, 1915. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. [50]

*In the District Court of the United States, for the  
Southern District of California, Northern Division,  
Ninth Circuit.*

No. 47—IN EQUITY.

THE UNITED STATES OF AMERICA,  
Plaintiff,  
versus

MIDWAY NORTHERN OIL COMPANY, a Corporation, Los Angeles—McKittrick Oil Company, a Corporation, Consolidated Midway Oil Company, a Corporation, National Pacific Oil Company, a Corporation, Maricopa Northern Oil Company, a Corporation, Thirty Thirty-two Land Company, a Corporation, General Petroleum Company, a Corporation, Standard Oil Company, a Corporation, Tarr & McComb, Inc., a Corporation, Layne & Bowler, Company of California, a Corporation, Title Insurance & Trust Company, a Corporation, Maricopa Consolidated Oil Company, a Corporation, Southern Investment Company, a Corporation, El Dora Oil Company, a Corporation, King Lumber Company, a Corporation, Sesame Oil Company, a Corporation, Mary F. Francis, a Widow, L. W. Lowell, James Bloom, William S. Kimball, Harry V. Massena, Arthur Whitfield, Maude Whitfield, James E. Stone, John V. Hoffman, M. E. Hoffman, Edward Fox, Charles A. Son, David S. Bachman, William R. Dunn, T. J. Green, M. P. Waite, Anna M. Waite, J. M.

Danziger, A. L. Weil, Florence G. Weil, A. B. Coulson, E. A. Wiltsee, G. G. Gillette, Sydney Smith, J. R. McKinnie, Orra E. Monnette, M. J. Monnette, R. P. Davie, Julius Fried, Parker Barrett, Oma Barrett, J. M. Dunn and Lena Dunn,

Defendants.

**Petition for Order Allowing Appeal.**

National Pacific Oil Company, a corporation, defendant, [51] herein, conceiving itself aggrieved by the Order given and rendered on the 23d day of April, 1915, and filed on the 26th day of April, 1915, in the above-entitled action, doth hereby appeal to the United States Circuit Court of Appeals, for the Ninth Circuit, from that part of said order, a copy of which order is hereto annexed, which orders that:

“IT IS FURTHER ORDERED that A. E. Campbell, Esq., be, and he is hereby appointed Receiver of the property described in the bill of complaint herein claimed by the Consolidated Midway Oil Company, the National Pacific Oil Company, Charles A. Son, David S. Bachman, and A. L. Weil, to wit:

The Northwest Quarter of Section Thirty-two, Township Twelve North, Range Twenty-three West, San Bernardino Base and Meridian, and of the oil, gas, and all other property of every kind situated on said land, or already extracted from said land and still in the possession of defendants, and the defendants, and each of them, their agents, attorneys and employees are enjoined from removing said oil, gas, or other property, or any part thereof from said land, or in any manner interfering with



the order of this Court, and are enjoined from further producing oil from said land, except by permission and under the direction of the said Receiver.

Said Receiver is directed to receive, and the said defendants are directed to surrender to said Receiver all moneys in their hands or in the hands of any person or corporation for them which are the proceeds of the sale of oil or gas produced from said lands hereinbefore described; and the said Receiver is directed to collect any notes, accounts, [52] or other evidences of debt due or payable on account of oil and gas produced from said lands and sold by or for said defendants, or any of them.

The said Receiver is given power and directed to operate any oil or gas well or wells on said property or to permit them to be operated by the respective defendants now in possession of or operating same, or who have heretofore operated on said lands; or to close said wells, if he deems it necessary or advisable to do so in order to conserve the oil and gas in said lands and prevent said property from being damaged or the oil and gas from being wasted.

The said Receiver is directed to ascertain the quantity of oil and gas heretofore extracted by said respective defendants, and to keep an accurate account of all oil and gas hereafter produced from said lands, and to sell said oil and gas for the best price obtainable.

For the purpose of making an investigation and determining the condition of the wells drilled on said land, and particularly for the purpose of determining whether water is infiltrating the oil sands or reser-

voirs on said lands, and for the further purpose of ascertaining the amount of oil and gas heretofore produced, the price at which the same has been sold, and the value thereof, the Receiver is directed and empowered to examine the logs of the wells and the books of account kept by the defendants or any of them in the development and operation of said lands.

For the purpose of preventing damage to said lands by the infiltration of water into the oil sands and otherwise, and for the purpose of protecting and operating the said property, the said Receiver is authorized to employ such assistance and incur such expense, to be paid out of the moneys coming into his hands as Receiver, as he shall deem [53] necessary, subject to the approval of this Court. All moneys coming into the hands of said Receiver, shall, unless otherwise directed by the Court, be deposited in a bank or banks to be selected jointly by the Receiver and the defendants who claim such moneys, or their respective solicitors of record, and the solicitor for the complainant, and such moneys shall be paid out by the said bank or banks only upon checks signed by said Receiver, and by the said solicitors of record, or otherwise as may be ordered by this Court.

A bond in the sum of Five Thousand (\$5,000) Dollars, to be approved by this Court, shall be given by the Receiver within five days from the filing of this order; provided the solicitor for the complainant or for the defendants, or either of them, may at any time upon one day's notice to counsel for the opposite parties, apply to the Court for an increase in the amount of said bond."

And defendant prays that this, its appeal, may be allowed; and that a transcript of the records and proceedings and papers upon which said order was made, duly authenticated, may be sent to the said United States Circuit Court of Appeals.

Dated 20th May, 1915.

A. L. WEIL,  
Solicitor for Defendant, National Pacific Oil Company.

[Endorsed]: No. 47—In Equity. District Court of United States, Southern District of California, Northern Division, Ninth Circuit. The United States of America, Plaintiff, versus Midway Northern Oil Company, a Corporation et al., Defendants. Petition for Order Allowing Appeal. Filed May 21, 1915. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. A. L. Weil, Solicitor for Defendant, National Pacific Oil Company, Alaska Commercial Bldg, San Francisco, California. [54]

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*In the District Court of the United States, for the Southern District of California, Northern Division, Ninth Circuit.*

No. 47—IN EQUITY.

THE UNITED STATES OF AMERICA,  
Plaintiff,  
versus

MIDWAY NORTHERN OIL COMPANY, a Corporation, Los Angeles—McKittrick Oil Company, a Corporation, Consolidated Midway Oil Company, a Corporation, National Pacific



Oil Company, a Corporation, Maricopa Northern Oil Company, a Corporation, Thirty Thirty-two Land Company, a Corporation, General Petroleum Company, a Corporation, Standard Oil Company, a Corporation, Tarr & McComb, Inc., a Corporation, Layne & Bowler, Company of California, a Corporation, Title Insurance & Trust Company, a Corporation, Maricopa Consolidated Oil Company, a Corporation, Southern Investment Company, a Corporation, El Dora Oil Company, a Corporation, King Lumber Company, a Corporation, Sesame Oil Company, a Corporation, Mary F. Francis, a Widow, L. W. Lowell, James Bloom, William S. Kimball, Harry V. Massena, Arthur Whitfield, Maude Whitfield, James E. Stone, John V. Hoffman, M. E. Hoffman, Edward Fox. Charles A. Son, David S. Bachman, William R. Dunn, T. J. Green, M. P. Waite, Anna M. Waite, J. M. Danziger, A. L. Weil, Florence G. Weil, A. V. Coulson, E. A. Wiltsee, G. G. Gillette, Sydney Smith, J. R. McKinnie, Orra E. Monnette, M. J. Monnette, R. P. Davie, Julius Fried, Parker Barrett, Oma Barrett, J. M. Dunn and Lena Dunn,

Defendants.

### **Assignment of Errors.**

National Pacific Oil Company, a corporation, defendant [55] and appellant herein, having appealed, or being about to appeal, from that certain Order made in the District Court of the United

States, for the Southern District of California, Northern Division, Ninth Circuit, on the 23d day of April, 1915, and filed on the 26th day of April, 1915, in an action pending in said Court in which The United States of America was plaintiff and the said National Pacific Oil Company, a corporation, and others, were defendants, by which said order a Receiver was appointed to take charge of the property of defendants, and each of them, says, that in the records and proceedings in the said Court in the said action, there are manifest errors, and assigns the following as its assignment of errors upon the said appeal:

I.

That said District Court erred in making said order and appointing a Receiver;

II.

That said District Court, in making said order, erred in this, that said Court had not, nor had the Judge thereof, any jurisdiction to make the said order;

III.

That said District Court erred, in making said order, in this, that the said Court abused its discretion and permitted an abuse of discretion in making said order;

IV.

That said District Court erred, in making said order, in that the complaint of plaintiff in said action did not show facts justifying the appointment of a Receiver;

## V.

That said District Court erred, in making said order, in that the complaint of plaintiff in the said action fails to [56] state any facts entitling the plaintiff herein to any equitable relief whatsoever.

## VI.

That said District Court erred, in making said order, in authorizing and directing the Receiver to take possession of the property mentioned in said order.

## VII.

That said District Court erred, in making said order, in this, that defendant at that time and long prior thereto was in the actual and peaceable possession of said property, claiming and holding the same under and by virtue of the laws of the United States, and that in and by the allegations of plaintiff's complaint herein, it appears that the plaintiff was and is out of possession. That it does not appear of record herein that an ancillary suit for the appointment of a Receiver had ever been commenced or brought by plaintiff against defendant. That plaintiff had and has a plain, speedy and adequate remedy at law, and said District Court, sitting as a Court of Equity herein, was and is without authority or jurisdiction to make said order.

## VIII.

That the District Court erred in making the order of the 23d day of April, 1915, and entered on the 26th day of April, 1915, appointing a Receiver herein, in that said Court was wholly without power and jurisdiction to give and make said order for the reasons



that a final decree dismissing the bill of complaint herein was entered on the first day of June, 1914; that no motion for a rehearing, or to vacate or annul said final decree herein was entertained by said Court during the term of said Court in which said final decree was given and [57] made; that during said term of said Court no order was made, nor asked for from said Court continuing any motion for a rehearing herein, to the succeeding term of said Court; that neither during said term of said Court, nor at any time thereafter, was any notice of motion for rehearing or any other motion by plaintiff herein served upon or given to the defendants herein. That no appeal from said final decree has ever been taken by the plaintiff herein.

WHEREFORE, the defendant, National Pacific Oil Company, prays that said order appointing a Receiver herein may be directed to be expunged from the records of said District Court for want of jurisdiction in said court to give and make said order appointing a Receiver.

In order that the foregoing assignment of errors may be and appear of record, the appellant above named presents the same to this Court, and prays that such disposition may be made thereof as by the law and the statutes of the United States in such case is made and provided.

A. L. WEIL,

Solicitor for Defendant and Appellant, National Pacific Oil Company.

[Endorsed]: No. 47—In Equity. District Court of United States, Southern District of California,

Northern Division, Ninth Circuit. The United States of America, Plaintiff, versus Midway Northern Oil Company, a corporation et al., Defendants. Assignment of Errors. Filed May 21, 1915. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. A. L. Weil, Solicitor for Defendant, National Pacific Oil Company, Alaska Commercial Bldg., San Francisco, California. [58]

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*In the District Court of the United States, for the Southern District of California, Northern Division, Ninth Circuit.*

No. 47—IN EQUITY.

THE UNITED STATES OF AMERICA,

Plaintiff,

versus

MIDWAY NORTHERN OIL COMPANY, a Corporation, Los Angeles—McKittrick Oil Company, a Corporation, Consolidated Midway Oil Company, a Corporation, National Pacific Oil Company, a Corporation, Maricopa Northern Oil Company, a Corporation, Thirty Thirty-two Land Company, a Corporation, General Petroleum Company, a Corporation, Standard Oil Company, a Corporation, Tarr & McComb, Inc., a Corporation, Layne & Bowler Company of California, a Corporation, Title Insurance & Trust Company, a Corporation, Maricopa Consolidated Oil Company, a Corporation, Southern Investment Company, a Corporation, El Dora Oil Com-

pany, a Corporation, King Lumber Company, a Corporation, Sesame Oil Company, a Corporation, Mary F. Francis, a Widow, L. W. Lowell, James Bloom, William S. Kimball, Harry V. Massena, Arthur Whitfield, Maude Whitfield, James E. Stone, John V. Hoffman, M. E. Hoffman, Edward Fox, Charles A. Son, David S. Bachman, William R. Dunn, T. J. Green, M. P. Waite, Anna M. Waite, J. M. Danziger, A. L. Weil, Florence G. Weil, A. B. Coulson, E. A. Wiltsee, G. G. Gillette, Sydney Smith, J. R. McKinnie, Orra E. Monnette, M. J. Monnette, R. P. Davie, Julius Fried, Parker Barrett, Oma Barrett, J. M. Dunn and Lena Dunn,

Defendants.

### **Order Allowing Appeal and Fixing Bond.**

On motion of A. L. Weil, Esq., counsel for defendant, [59] National Pacific Oil Company, a corporation, and on filing the petition of said defendant for an order allowing an appeal, together with an assignment of errors, IT IS ORDERED that an appeal be and is hereby allowed to the United States Circuit Court of Appeals, for the Ninth Circuit, from the order given and made herein on the 23d day of April, 1915, and filed on the 26th day of April, 1915, in the District Court of the United States, for the Southern District of California, Northern Division, Ninth Circuit, appointing a Receiver to take charge of the property of defendants, and each of them.

That the amount of the bond upon said appeal be and is hereby fixed at the sum of \$—— if the writ of



supersedeas is desired.

That upon the execution and approval of said bond by this Court, a writ of supersedeas issue under the seal of this court, directed to plaintiff herein, its agents and servants, and the Receiver appointed herein under said order, that they desist and refrain from, in any manner, interfering with the southeast quarter of said property, or in any manner enforcing or attempting to enforce said order of the 23d day of April, 1915, against National Pacific Oil Company, until said appeal be heard and determined, or the further order of this Court. If a M. T. D. supersedeas is desired appellants may apply therefor to the Court of Appeals.

Dated 21st of May, 1915.

M. T. DOOLING,  
Judge.

[Endorsed]: No. 47—In Equity. District Court of the United States, Southern District of California, Northern Division. The United States of America, Plaintiff, versus Midway Northern Oil Company, a corporation, et al., Defendants. Order Allowing Appeal and Fixing Bond. Filed May 21, 1915. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. A. L. Weil, Solicitor for Defendant, National Pacific Oil Company, Alaska Commercial Bldg., San Francisco, California. [60]

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[Bond on Appeal.]

KNOW ALL MEN BY THESE PRESENTS,  
That we, National Pacific Oil Company as principal,

and G. J. Syminton and R. E. Maynard, as sureties, are held and firmly bound unto the United States of America in the full and just sum of five hundred dollars, to be paid to the said The United States of America, its certain attorney, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 21st day of May in the year of our Lord one thousand, nine hundred and fifteen.

WHEREAS, lately at a District Court of the United States for the Southern District of California, Northern Division, 9th Circuit, in a suit depending in said Court, between the United States of America, plaintiff, vs. Midway Northern Oil Company, a corporation, et al., in which an order overruling motion to dismiss, and appointing a Receiver was rendered against National Pacific Oil Company and the said National Pacific Oil Company having obtained from said Court an order allowing an appeal to reverse the said order in the aforesaid suit, and a citation directed to the said The United States of America citing and admonishing it to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California.

NOW, the condition of the above obligation is such, that if the said National Pacific Oil Company shall prosecute its appeal to effect, and answer all damages and costs if it fail to make its plea good,

then the above obligation to be void; else to remain in full force and virtue. [61]

NATIONAL PACIFIC OIL CO., (Seal)

E. B. KIDSON, (Seal)

Secy.

G. J. SYMINTON. (Seal)

R. E. MAYNARD. (Seal)

Acknowledged before me the day and year first above written.

[Seal]

BERTHA L. MARTIN,

Notary Public in and for the County of Los Angeles,  
State of California.

United States of America,

Northern District of California,—ss.

G. J. Syminton and R. E. Maynard being duly sworn, each for himself, deposes and says, that he is a freeholder in said District, and worth the sum of FIVE HUNDRED DOLLARS ~~Dollars~~, exclusive of property exempt from execution, and over and above all debts and liabilities.

G. J. SYMINTON,

R. E. MAYNARD.

Subscribed and sworn to before me, this 21st day of May, A. D. 1915.

[Seal]

BERTHA L. MARTIN,

Notary Public in and for the County of Los Angeles,  
State of California.

[Endorsed]: No. 47—In Equity. United States District Court for the Southern District of California, Northern Division, Ninth Circuit. The United States of America vs. Midway Northern Oil Com-



pany, a Corporation, et al. Bond on Appeal of National Pacific Oil Company. Form of Bond and sufficiency of Sureties Approved. M. T. Dooling, Judge. Filed, Jun. 1, 1915. Wm. M. Van Dyke, Clerk, by Chas. N. Williams, Deputy Clerk. [62]

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UNITED STATES OF AMERICA.

*District Court of the United States, Southern District of California, Northern Division.*

Clerk's Office.

No. 47—CIVIL.

THE UNITED STATES OF AMERICA

vs.

MIDWAY NORTHERN OIL COMPANY et al.

**Praeipie [for Transcript of Record on Appeal].**

To the Clerk of Said Court:

Sir: Please issue Transcript of record on appeal of defendant, National Pacific Oil Company, in the above-entitled action, containing the following papers therein, viz:

1. Bill of Complaint;
2. Motion of Said Defendant to Dismiss Bill of Complaint;
3. Order Granting Motion to Rehear, Overruling Motion to Dismiss and Appointing Receiver;
4. Petition for Order Allowing Appeal, Omitting Therefrom Copy of Order Overruling Motion to Dismiss, etc., Attached Thereto;
5. Assignment of Errors;

6. Order Allowing Appeal, and Fixing Bond; and
7. Bond on Appeal.

A. L. WEIL,  
Solicitor for National Pacific Oil Co.

[Endorsed]: No. 47—Civ. U. S. District Court, Southern District of California, Northern Division. United States vs. Midway Northern Oil Co., et al. Praecipe for Transcript on Appeal of National Pacific Oil Co. Filed, Aug. 26, 1915. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. [63]

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**[Certificate of Clerk U. S. District Court to  
Transcript of Record on Appeal.]**

*In the District Court of the United States, in and  
for the Southern District of California, North-  
ern Division.*

No. 47—CIVIL.

THE UNITED STATES OF AMERICA,  
Plaintiff,  
versus

MIDWAY NORTHERN OIL COMPANY, a Cor-  
poration, Los Angeles-McKittrick Oil Com-  
pany, a Corporation, Consolidated Midway  
Oil Company, a Corporation, National Pacific  
Oil Company, a Corporation, Maricopa North-  
ern Oil Company, a Corporation, Thirty  
Thirty-Two Land Company, a Corporation,  
General Petroleum Company, a Corporation,  
Standard Oil Company, a Corporation, Tarr &  
McComb, Inc., a Corporation, Layne & Bowler

Company of California, a Corporation, Title Insurance & Trust Company, a Corporation, Maricopa Consolidated Oil Company, a Corporation, Southern Investment Company, a Corporation, El Dora Oil Company, a Corporation, King Lumber Company, a Corporation, Sesame Oil Company, a Corporation, Mary F. Francis, a Widow, L. W. Lowell, James Bloom, William S. Kimball, Harry V. Massena, Arthur Whitfield, Maude Whitfield, James E. Stone, John V. Hoffman, M. E. Hoffman, Edward Fox, Charles A. Son, David S. Bachman, William R. Dunn, T. J. Green, M. P. Waite, Anna M. Waite, J. M. Danziger, Daisy C. Danziger, A. L. Weil, Florence G. Weil, A. B. Coulson, E. A. Wiltsee, G. G. Gillette, Sydney Smith, J. R. McKinne, Orra E. Monnette, M. J. Monnette, R. P. Davie, Julius Fried, Parker Barrett, Oma Barrett, J. M. Dunn and Lena Dunn,

Defendants.

I, Wm. M. Van Dyke, Clerk of the District Court of the United States of America, in and for the Southern District of California, do hereby certify the foregoing sixty-three [64] (63) typewritten pages, numbered from 1 to 63, inclusive, and comprised in one (1) volume, to be a full, true and correct copy of the Bill of Complaint, Motion to Dismiss Bill of Complaint, Order Allowing Rehearing, Overruling Motion to Dismiss, and Appointing Receiver, Petition for Order Allowing Appeal, Assignment of Errors, Order Allowing Appeal and Fixing Bond,



Bond on Appeal, and Praecipe for Transcript in the above and therein entitled Transcript, and that the same together constitute the record in said cause as specified in the said Praecipe filed in my office on behalf of the National Pacific Oil Company, defendant and appellant, by its attorney of record.

I do further certify that the cost of the foregoing record is \$36.65, the amount whereof has been paid me by the National Pacific Oil Company, the appellant in said cause.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the District Court of the United States of America, in and for the Southern District of California, Northern Division, this 8th day of September, in the year of our Lord, one thousand nine hundred and fifteen, and of our Independence, the one hundred and fortieth.

[Seal]

WM. M. VAN DYKE,

Clerk of the District Court of the United States of America, in and for the Southern District of California.

By Leslie S. Colyer,  
Deputy Clerk.

[Ten Cent Internal Revenue stamp. Canceled 9/  
18/15. L. S. C.] [65]

[Endorsed]: No. 2658. United States Circuit Court of Appeals for the Ninth Circuit. National Pacific Oil Company, a Corporation, Appellant, vs. The United States of America, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Southern District of California, Northern Divison.

Filed September 21, 1915.

FRANK D. MONCKTON,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

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**[Order Allowing Appellant to and Including August  
19, 1915, to File Transcript on Appeal.]**

*In the District Court of the United States, Southern  
District of California, Northern Division, Ninth  
Circuit.*

No. 47—CIVIL—IN EQUITY.

UNITED STATES OF AMERICA,

Plaintiff and Respondent,

vs.

MIDWAY NORTHERN OIL COMPANY, et al.,

Defendants and Appellants.

Good cause being shown therefor,

IT IS HEREBY ORDERED that the appellant National Pacific Oil Company have sixty (60) days additional and further time from the 20th day of June, 1915, within which to file its transcript on ap-

peal in the above-entitled suit with the Clerk of the United States Circuit Court of Appeals on and for the Ninth Circuit.

Dated June 16, 1915.

M. T. DOOLING,

Judge of the District Court.

[Endorsed]: No. 47—Civil—In equity. U. S. District Court, Southern District of California, Northern Division, Ninth Circuit. United States of America, Plaintiff and Respondent vs. Midway Northern Oil Company et al., Defendants and Respondents. Order Extending Time to File Transcript on Appeal. Filed Jun. 17, 1915. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

No. 2658. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to Aug. 19, 1915. File Record Thereof and to Docket Case. Filed Sep. 7, 1915. F. D. Monckton, Clerk. Refiled Sep. 21, 1915. F. D. Monckton, Clerk.



**[Order Allowing Appellant to and Including October 18, 1915, to File Transcript on Appeal.]**

*In the District Court of the United States, Southern District of California, Northern Division, Ninth Circuit.*

No. 47—CIVIL—IN EQUITY.

UNITED STATES OF AMERICA,

Plaintiff and Respondent,

vs.

MIDWAY NORTHERN OIL COMPANY, et al.,

Defendants and Appellants.

Good cause being shown therefor,

IT IS HEREBY ORDERED that the appellant National Pacific Oil Company have sixty (60) days further time in addition to the time heretofore allowed within which to file its transcript on appeal in the above-entitled suit with the clerk of the United States Circuit Court of Appeals in and for the Ninth Circuit.

Dated, August 16, 1915.

ROSS,  
Circuit Judge.

[Endorsed]: No. 2658. United States Circuit Court of Appeals for the Ninth Circuit. United States of America vs. Midway Northern Oil Company et al. Order Extending Time to File Record. Filed Sep. 7, 1915. F. D. Monckton, Clerk. Refiled Sep. 21, 1915. F. D. Monckton, Clerk.

